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AUTHOR Morin, Lucien; Cosman, J. W.
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ABSTRACT

Because the Standard Minimum Rules for the Treatment of Prisoners represent what the international community considers minimum standards of respectability and decency in the treatment of prisoners, they are very influential. Unfortunately, they include no underlying rationale, an omission that is a major obstacle to interpretation and implementation. Also, they do not emphasize or even accord much place to the key United Nations (UN) stated principle of the inherent dignity of the human person, upon which so much else depends. The rules say very little about justice or criminal justice and leave largely to those working in the field the task of deriving from the text underlying principles of justice. The rules tend to reflect prevailing practice and perpetuate the conventional wisdom according to which penal justice is fundamentally punitive and retributive. An interim step to a thorough review of the rules would be a strengthening of the statement of principle. This step would serve to provide a basis for interpreting and implementing the rules other than in conventional ways and in ways more in keeping with the UN's long-standing concern for human dignity and the development of the human person. (A suggested resolution to amend the rules is appended.) (YLB)

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International Council for Adult Education
Conseil International d'Education des Adultes
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الجلس العالمي لتعليم الكبار

720 Bathurst St., Suite 500
Toronto, Ontario, Canada
M5S 2R4

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PROPOSED AMENDMENT
OF
THE UNITED NATIONS STANDARD MINIMUM RULES
FOR THE TREATMENT OF PRISONERS

Lucien Morin and J.W. Cosman

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Lucien Morin is Professor at the Faculté des sciences de
l'éducation, Université Laval, Québec, Canada, G1K 7P4. J.W.
Cosman is Coordinator of the Education and Criminal Justice
Programme of the International Council for Adult Education,
1265 Carson Avenue, Dorval, Québec, Canada, H9S 1M5.

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PROPOSED AMENDMENT OF THE UNITED NATIONS STANDARD
MINIMUM RULES FOR THE TREATMENT OF PRISONERS

Introduction

The original version of the Standard Minimum Rules for the Treatment of Prisoners was prepared by the former International Penal and Penitentiary Commission and was endorsed by the League of Nations in 1934. A revised version was adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1955 and was approved by the Economic and Social Council in 1957.

The Rules did not pretend to be a systematic body of principle and precept. On the contrary, they made up a code of what was, at the time, generally accepted and considered desirable, a rather detailed consensus of the opinion of the day concerning good practice in the treatment of prisoners and the management of prisons. As such, they were a major advance, and without doubt they have been influential in bringing about many important penal and other reforms.

The Standard Minimum Rules are influential, not because they are binding on member states, but because they exercise a moral influence on national authorities. Representing, as they do, what the international community considers minimum standards of respectability and decency in the treatment of prisoners, most national authorities would prefer to be in conformity with them. The Standard Minimum Rules, consequently, tend to become reflected in state legislation and in state prison policy. The evolution of the Rules is,

therefore, of great importance. For it is a matter of much consequence to prisons and prisoners around the world, and to the people in whose name they are administered and who are, ultimately, responsible for them, that the Rules are adequate and appropriate, and that they are expressed with the necessary accuracy and intelligibility to achieve their desired effects in terms of the laws and policies of states. In addition, because of the basic principles upon which they rest, the Rules can serve as a constant reminder of the meaning and purpose, not only of penal practice and administration, but of criminal justice as well.

Over thirty years have passed since the First UN Congress on the Prevention of Crime and the Treatment of Offenders adopted the Standard Minimum Rules for the treatment of Prisoners. The authors of the Rules did not intend that they should be immutable. They foresaw the need for their further development on the basis of experience and new insight. This need has been recognized by various congresses since 1955. In addition, there have been expressions of concern by recent congresses about the implementation of the Rules; and following the Sixth Congress there was an expression of concern by the Economic and Social Council about the existence of obstacles to their implementation. Moreover, since 1955, other international instruments for the protection of human rights have given expression to concepts not fully reflected in the Rules. It is not surprising, therefore, that in 1984, by Resolution 1984/47, the Economic and Social Council approved a set of Procedures for the Effective Implementation of the Rules, one of which procedures (No. 11) requires the UN Committee on Crime Prevention and Control to "keep under review, from time to time, the Standard Minimum Rules, with a view to the

elaboration of new rules, standards and procedures applicable to the treatment of persons deprived of liberty ..."

1. Some limitations of the present Standard Minimum Rules

It is a weakness of the Rules that they are vague in their rationale and express no guiding or explanatory philosophy. This is a major obstacle to interpretation and to implementation. The most general basic principle of the Rules is formulated as follows:

PART I, Rule 6

" (1) The following rules shall be applied impartially. There shall be no discrimination on the ground of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

(2) On the other hand, it is necessary to respect the religious beliefs and moral precepts of the group to which a prisoner belongs."

Assuredly, these principles are not wrong, but they do not go very far. While by their nature written rules need to be concise, they need also to express their ideas adequately and precisely.

Another basic principle, applicable to prisoners under sentence, is stated as follows:

PART II, Rule 58

"The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime."

Although there is some truth in that principle, it is not the whole truth. One particular role of the state cannot logically be isolated and expressed out of context and perspective in that way. While one of the functions of the state is surely to protect society against crime, the state has other functions as well, more positive functions essentially. It is held by many that the role of the state is to promote the welfare and development of the individual members of society in terms of the fulfilment of their basic human needs, needs that are universal, that are shared by all human beings in all ages, for example, life, friendship, knowledge, reasonableness, etc. Amongst such needs it is extremely difficult, if not impossible, to discover any objective priority. They seem to be all very basic. The responsibility of the state for protecting society against crime, therefore, is one that should be discharged in keeping with the state's responsibilities for contributing to the fulfilment of other basic human needs as well, for promoting many if not all of the conditions of human flourishing. In defining the objectives of government or any branch of government it is an error to focus exclusively on one particular need, such as the protection of society. To conceive of the role of the criminal justice system in terms solely of protecting society against crime is to define it in terms of its differentiae, completely ignoring the fact that it has other objectives in common with other branches of government. This is not a question of political ideology; it is a question of logic.

An unfortunate implication of Rule 58 is that prisoners are not just prisoners, that is, persons who have been sentenced and confined to prison, but individuals to be considered offenders or criminals. And, as offenders or criminals commit crimes, the protection of society has to

mean prediction and prevention. But what is this right to keep on stigmatizing prisoners as criminals or offenders? Who can say for sure that one is a "born" criminal or an "habitual" criminal? Who is to know? Where is it written that justice has the right to transform itself into a science of predicting behaviour, a kind of anticipatory biography of crime before the fact? Who is to judge? What is justice when it endeavours to judge of the possible further crimes of an individual, judging not only what this individual has done but also what he is, will be and can be? When justice is transformed into prophesy, its appetite for power may become insatiable. What it yearns for, or says it needs, always seems beyond, not only the limit of what it actually is, but of what it can and should be. It ends up by ambushing itself in twisted imperatives of self-regulation, self-justification and self-gratification.

The Standard Minimum Rules do, of course, reflect other principles which are occasionally alluded to or implied or, in the absence of principles to the contrary, are simply accepted because they are part of the conventional wisdom. Such principles, however, need to be stated to make possible their critical examination and the elucidation of their relationships to other principles.

One principle that is not well expressed in the Rules is a concept of the greatest importance to the United Nations: the concept of the inherent dignity of the individual human person. This concept does not appear at all in the Rules of General Application, and it appears only once in the Rules Applicable to Special Categories. Even there, it is not projected as a fundamental principle but in a rather secondary way.

PART II, Rule 60

" (1) The régime of the institution should seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings."

This is not to suggest that the requirements of human dignity are not to some extent provided for by the Rules. It is to suggest, rather, that the principle is not well stated and given appropriate prominence and that it therefore does not have the influence it should have. The effects, or rather the lack of effects, are very considerable. We shall return to this basic question of human dignity later.

What is also missing from the Rules is a view of justice. They simply do not say much about justice, a concept that is used in various ways. For example, people speak of a just person, just redress, a just share, a just reward or punishment, a just agreement, a just cause, a just law, a just society, and so on. The idea of justice is also used in a justificatory way, as a warrant for other ideas, programmes of action, legislation and even legal systems. In the name of justice, with justice as the end, activities are organized and conducted in such areas as health care, economic development, environmental protection, education, the status of women, care of the old and disabled, rights of native peoples, and so on. Yet rarely do people say what their idea of justice is, tending instead to use it in this way and that, without precision and without consistency. The idea is, consequently, a confusing and shifting ground for legislation, policy and programmes, and somehow unconvincing and lacking in motive power as a basis of human action and allegiance.

It is the same in the case of criminal justice and with the Rules. What is criminal justice? What is the basis of criminal law? What is the relationship between the legal and the moral? What is the basis of obligation? What is law itself? While it would be manifestly impossible for the Rules to include a thorough philosophy of criminal justice, it would be helpful if they at least identified the main philosophical principles that do in fact, whether they are stated or not, underly and determine the details of the Rules. The existence of unstated presuppositions is referred to in the Rules as follows:

PRELIMINARY OBSERVATIONS, Rule 3

"On the other hand, the rules cover a field in which thought is constantly developing. They are not intended to preclude experiment and practices, provided these are in harmony with the principles and seek to further the purposes which derive from the text of the rules as a whole ..."

Some of these principles and purposes may be questionable and even unsound, thus giving rise to distortion and error in interpretation and implementation.

One such principle is that a justificatory purpose of a sentence of imprisonment is rehabilitation, by which is meant "to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life" (Rule 58). Unfortunately, the concept of rehabilitation is laden with misconceptions and ambiguous connotations, especially when it is identified with "treatment" and when the emphasis is on producing "law-abiding" citizens. There is something fundamentally wrong with the concept of treatment -- a

medical concept -- when applied to prisoners; and the notion of a law-abiding citizen is not very helpful either. To illustrate, many Nazis were law-abiding citizens who nevertheless tortured and killed Jews.

There is something negative about the idea of rehabilitation. It is somehow estranged from the idea of person, from the positive notion of human promotion and development. In fact, rehabilitation may amount to no more than an updated process of scapegoating, albeit more sophisticated than the ancient processes of immolation. Certainly, most approaches to rehabilitation have been ineffective. And the reason for the ineffectiveness has nothing to do with insufficient research in causality or etiology, or with taxonomies of measurable objectives. The problem is with an inadequate philosophy of human conduct. Most techniques of rehabilitation reflect a philosophy of human behaviour as the product of a solitary will and reason. According to this view, the individual exists by himself alone, as an autonomous and atomic self, and not as a self that is achieved through a complex of relations, through its interaction with the world. Modern approaches to rehabilitation simply do not address the fundamental question of human relations.

A second unstated and questionable principle underlying the Rules is that criminal justice is and should be fundamentally punitive. By definition, punishment is the infliction of suffering. While penal sanctions may sometimes happen to be painful, should they necessarily be so? Must reparation, for example, be painful? Must the loss of a permit to drive an automobile, for instance, be accompanied by suffering? If the infliction of suffering is not an essential part of the criminal sanction, then the criminal

law is not essentially punitive. On the contrary, it can be argued with some force that it should be essentially reparative and reconciliatory. In the Rules, however, there is an acceptance of criminal law as a kind of penal magic, as if violence can produce non-violence, or as if reconciliation can be the aim and effect of punishment. Hence, the impotence of much criminal law in the face of what it does not change but which it nevertheless tries to annul through punishment. Here again, as with the principle of rehabilitation, the accepted wisdom concerning the punitive nature of criminal justice reflects the status quo and does not address the underlying question of human relations, of reciprocal human need, mutual obligation and esteem.

A third questionable principle that is generally part of the accepted wisdom and undoubtedly underlies the Rules is that one of the fundamental aims of criminal justice is retribution. This principle affirms that justice requires a fitting response to wrongdoing, a response that is appropriate and adequate. This reveals a kind of justice as violence. It assumes a notion of the violence of justice as an inevitable response or reply to an earlier violence, and on and on. It confirms, without being able to acknowledge, that there is little difference between the violent act which the violence of justice is intended to prevent or punish and the violence itself. It is difficult to avoid observing that, as a response to and reprisal against violence, justice as violence or retribution is symmetrical with vengeance, however legal and "due processed" this retribution may be. In the accepted wisdom, criminal justice seems inseparable from violence. This inherence of violence in the system forces it to accept the principle of retribution.

Another unstated principle but nevertheless present in the Rules is that one of the aims of criminal justice is deterrence. This principle is often used to justify punishment in general and a sentence of imprisonment in particular. The argument lacks force, however, in the absence of much evidence to support it, and in view of the accepted fact that not only do prisons not deter crime, they are criminogenic. It is maintained by some that prisons could be freed of a large proportion of their populations without danger to society or increase in the rate of crime. Moreover, this principle of deterrence reflects a very pessimistic view of human nature, a rejection in fact of the hope of human development.

To return to the starting point and without prolonging this analysis further, although it could be extended, it is now evident that the Standard Minimum Rules would benefit from a statement of their underlying rationale, from a systematic presentation of the principles on which they are based and of which they are the operational implications, which would make possible a critical examination of their foundations. Such an examination might reveal, for example, that the principle of the dignity of the human person is in conflict with principles such as rehabilitation, punishment and retribution, that the Rules in fact seek to achieve contradictory objectives, possibly as the result of political compromise in order to find consensus. But contradiction in attempts to justify or explain objectives is one thing (different theoretical justifications of human rights, for example, may be contradictory), but contradictory objectives are something else altogether. Contradictory objectives make no sense and command no action,. One cannot at one and the same time act on the contradictory imperatives to walk and stand still, to speak and remain silent. Contradictory

objectives can lead only to stalemate or paralysis. And here again, this is not a problem of opinion or consensus; it is a question of logic.

2. Human dignity: a basic principle

The principle of human dignity, which as indicated earlier is more or less missing from the Rules, is expressed in the Charter of the United Nations and in the Universal Declaration of Human Rights. It is recognized also in subsequent instruments, for example, in the International Covenant on Economic, Social and Cultural Rights, and in the International Covenant on Civil and Political Rights, and it is a basic concept of the Helsinki Accords. The concept is to be found also in various resolutions and declarations of a number of international bodies. The dignity of the individual human person has come to be recognized as a universal principle underlying the relationship between peoples, individuals and cultures. And the reason is simple: human dignity is a value which all human beings share in common precisely because they are persons. All human beings, however repugnant and depraved, whatever their sex, their age, their language, their state of health, their religious beliefs or their social situation, have an inviolable dignity as persons. This is far-reaching. The prisoner who is a rapist or murderer, the deformed child broken by the constant suffering of his illness, the withered old man deteriorated by wear and tear or self-sacrifice, the mentally deranged person dispossessed of his faculties, each one has a sacred dignity. Respecting human dignity means accepting that a person is a person no matter what. If bioethics, for example, is preoccupied with the value and status of the foetus and of the embryo, if it is concerned about genetic manipulation, euthanasia and in vitro fertilization, it is

because of the binding respect commanded by the principle of human dignity.

Individuals can philosophize about human dignity, but the affirmation here of the fact without the proof is not a methodological blunder to be avoided, for it signifies nothing less than the advent of humanity. So that human dignity is neither the product of some arbitrary choice nor the result of some mental caprice or fancy. Human dignity is a fundamental and sacred value which imposes itself upon man's faculties and to which he can only respond. Human dignity is not only a right, but the basis of all rights.

What then are the implications of this concept for prison administrations, prison standards, and criminal justice systems? At the most fundamental level, there is the injunction to respect the intrinsic worth of the human being per se, to attach a sacred value to the individual person and to treat him accordingly, in the fullness of his nature and not just in one of his special aspects, for example, as a worker, or as a consumer, or as a prisoner, and so on, and not limited either by the interpretative concepts of any particular science.

The dignity of the human person implies such fundamental things as treating every human being as an end in himself and not just as a means. "So act as to treat humanity," enjoins Immanuel Kant, "whether in thine own person or that of another, in every case as an end withal, never as a means only" (Groundwork of the Metaphysics of Morals). It implies acknowledging the freedom of individual choice in such matters as social arrangements and familial life, avoiding coercion and other demeaning or humiliating acts. It implies such things and more.

There are human needs -- love, friendship, a sense of solidarity, etc. -- which belong to "another order," as Hegel would say, the order of personhood, of human development. Criminal law tends to look backwards, so to speak, responding to the need for protection, which is important of course when human survival is at stake. The need to survive and the need to develop, however, are two very different needs. Criminal law tends also to be directed against injustice, which is also useful when human rights are at issue. Again, however, basic human rights and basic human needs are not identical. Even when human needs give birth to human rights, the latter do not suffice, as they cannot guarantee the generosity and brotherhood which nourish the need and the spirit of fraternal obligation. Love, friendship, fraternal obligation are needs which belong to this higher order, the order of human promotion, which is over and above the order of protection and prevention. This higher order is the order of human dignity.

3. Human dignity and education

Some of the effects of not expressing the principle of human dignity in the Rules can be seen in the area of prison education. Here it needs to be observed, first, that human life is not static: it is dynamic, a process of becoming. It is a process of becoming what it is a human being's nature to become, a process of realization, of fulfilment. So that the concept of the dignity of the human person implies respect for the individual, not only in his actuality, but also in his potentiality. It implies respect for the human person as he can become and especially as he can become. This is a fundamental principle of education, as education in its essence is aimed at human development, at guiding the process

whereby people become what they have the possibility of becoming as human persons. On the principle of human dignity, therefore, education, which is uniquely and pre-eminently concerned with learning and human development, education conceived of in genuinely human terms, should be a fundamental concern of the prison. In practice, however, lacking priority, education is rarely more than a marginal activity of most prisons. According to most studies, from official reports to informal accounts by professional educators who have observed what goes on, prison education programmes are mostly of inferior quality. The manifestations are many: mediocre professional staff, low expectations, poor educational achievement, weak curricula, inadequate supervision, lack of educational counselling, and so on. Moreover, there is a lack of a profound and articulated philosophy of education, which is not uncommon anywhere in the field of education in the absence of an express recognition of the inherent dignity of the human person.

Article 26 of the Universal Declaration of Human Rights and Article 13 of the International Covenant on Economic, Social and Cultural Rights prescribe that "education shall be directed to the full development of the human personality ...". On the basis of that prescription, education is not just the teaching of facts and skills and rules of conduct. It is not primarily a matter of memory and submission. It is not just a matter of training. Education aimed at the development of the human personality is a matter of developing human capacities for dynamic intellectual activity and active moral judgment. This requires a method and an environment which will stimulate and enable the student to fashion the instruments of logical thought and of moral reasoning and in the formation of which the student must

collaborate. Such collaboration cannot take place in an authoritative atmosphere of intellectual and moral restraint where learning is conceived of as simply receiving an intellectual heritage or professional training. Nor can it take place in a totally relativistic atmosphere as if there were no reality outside the self, as if it were possible for the self to develop and find meaning except through community with an objective order.

Moreover, education directed to the development of the human personality does not proceed very far in a fragmented way. As Piaget pointed out, such education presupposes

"the existence of a collective environment simultaneously developing the moral personality and representing a systematic source of intellectual exchanges. Real intellectual activity in the form of experiment and spontaneous inquiry cannot, in fact, develop without the free collaboration of individuals, that is, amongst the students themselves and not merely collaboration between the individual student and the teacher. Intellectual activity requires not only constant mutual stimulation, but also, and in particular, mutual control and the exercise of the critical spirit ... Logical operations are, in fact, always cooperative operations, and they imply a whole series of intellectual reciprocal relationships, and cooperation which is simultaneously moral and rational." ("The Right to Education in the Modern World" in Freedom and Culture, 1971).

Education directed to the full development of the human personality involves the intellectual, emotional, social and moral domains. Such a concept of education is quite foreign to contemporary approaches to prison administration.

There has been much confusion surrounding the nature and the role of education in prisons. In actual practice, prison

education is most often seen primarily as a way of operating the prison, as one of the many tools of incarceration technology. While its institutional presence is more than sporadic, its traces, in terms of human development, are sediments with no evident persistence in the stratum of the various serious attempts at reform, moments of no lasting impact in the discontinuous efforts at change. As a result, attempts to speak of the practice of prison education amount, in fact, to speaking of incarceration practice. And there are a number of prevailing concepts of the role of prison education which illustrate the correctional ideology. For example, prison education is seen as an obligatory classification of deviation and a gradation of differences, a training of tendencies and discipline of attitudes, an identification of lacunae and isolation of their causes, a privileged technique of moral correction, a studied pretext for establishing criteria of normality, panoptic surveillance and control, exculpatory compensation, economic strategy, and so on. All of these, obviously, are linked to the primary orientation of the correctional ideology from which, in fact, they can be separated only as extensions and variants.

Most correctional or penal ideology in modern times has been based on a combination of four approaches: discipline and control, isolation, training for work, and treatment.

The modern prison has usually governed in detail all aspects of individual life. It has had almost total power over prisoners, with its own mechanisms of repression and punishment. It has sought to achieve reformation through enforcement, through restraint, through imposing new ways of thinking and feeling and acting.

The modern prison has also relied heavily on the technique of isolation, of isolating prisoners not only from the external world but also from each other. Solitude has been used both as a means of submission and as an instrument of reform, sometimes to habituate prisoners to prescribed rules of conduct, sometimes to evoke stirrings of conscience, but almost always it has involved the coercive eradication of the prisoner's relationships to others, except such as may be imposed by the prison.

The modern prison has also attempted to train prisoners in certain skills and in habits of work, order and obedience, to the end of preparing them for paid employment. That purely utilitarian aim has determined the nature of most training and education available to prisoners.

Finally, the modern prison has used a method of treatment, sometimes called correctional training, which has been essentially a mechanical process. Most treatment programmes have been based on the assumption that criminal behaviour can be explained in terms of some psychopathological condition requiring cure through various forms of therapy. The results are well-known. There is no evidence of the effectiveness of such programmes.

It is evident that the concept of education as directed to the full development of the human personality goes much beyond the prevailing concepts and practices of prison education. It is evident also that the aim of human development, as implied by the UN principle of human dignity, and as prescribed by the Universal Declaration of Human Rights and by the International Covenant on Economic, Social and Cultural Rights has not been accepted or even seriously attempted in the modern prison. To the very limited extent

to which it has occasionally been tried, it has suffered from being conceived of as only a means of serving what is assumed to be the "ultimate" purpose of a sentence of imprisonment: the protection of society against crime. Human development, however, cannot without distortion be considered a means subordinate to the end of protecting society, or even be defined exclusively in terms of social reintegration. Human development is not a means; it does not need to be justified by some other end; it is an end in itself.

4. Summary

To summarize, because the Standard Minimum Rules for the Treatment of Prisoners represent what the international community considers minimum standards of respectability and decency in the treatment of prisoners, they are very influential. Unfortunately, they include no underlying rationale, an omission which is a major obstacle to interpretation and to implementation. The Basic Principle of the Rules (Rule 6) sets out no basic purposes at all. One of the Guiding Principles Applicable to Prisoners under Sentence (Rule 58), which states that "the purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime," is a gross oversimplification in that it does not reflect, in any way, the state's other responsibilities for the general welfare, some of which have important implications for the treatment of prisoners.

Also, the Rules do not emphasize or even accord much place to the key UN principle of the inherent dignity of the human person upon which so much else depends. Moreover, the Rules say very little about justice or criminal justice, and they leave it largely to those working in the field to derive

from the text of the Rules their underlying principles. Thus, as the Rules tend to reflect prevailing practice, and as they include no rationale which might point in other directions, they tend to support and even perpetuate the conventional wisdom according to which penal justice is fundamentally punitive and retributive and carried out, however ineffectively, by some combination of four approaches: discipline and control, isolation, training for work, and treatment according to a medical-disease concept of criminal behaviour. Unfortunately, these principles of punishment and retribution and these traditional approaches are incompatible with the principle of human dignity which is perhaps the paramount principle of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. It is thus not surprising that, as most experts agree, the modern prison has been a failure.

The reform of prevailing penal practices obviously will require some profound re-thinking of the principles of criminal justice, the nature of human relationship, the implications of human dignity, the requirements of human development, and the origins of violence. Such an analysis would provide a background for a thorough review of the Standard Minimum Rules for the Treatment of Prisoners. As this is a major undertaking, however, which would require considerable time, it would be desirable to take an interim step, acceptable to all concerned, which would serve for the time being to provide a basis of principle for interpreting and implementing the Rules other than in conventional ways, and more in keeping with the UN's long-standing concern for human dignity and the development of the human person. This could be achieved by strengthening the statement of principle

set out in Part I (Rules of General Application) of the Standard Minimum Rules.

The additional strength that the statement of principle needs is a clear expression of the principle of human dignity. That is essential, as justice alone is insufficient for a just society. Justice is both a legal and a moral matter, the latter being the natural foundation of the former. When we forget this basic truth, there occurs in justice what occurs in many other areas: it is our perceptions that create reality, rather than reality that determines our perceptions. So that the realities of justice and the law we have configured often turn out to be but the reifications of our perceptions of justice and the law. And unless one becomes aware of the dissonance between reality and belief, no change is possible. The Rules, therefore, should somehow recognize that our cultural mind has become conscious of this dissonance between the reality of justice and our beliefs about justice. Our ideas about right, nature, human nature, truth, good, consciousness, causality, justice, law, etc., have all undergone Copernican revolutions in recent years. We cannot ignore these changes, because they have had a profound effect on our theories and practices of justice. Accordingly, should not the Standard Minimum Rules reflect some of the discoveries concerning our basic assumptions about justice and law? For instance, that justice, unrooted from natural law or ethics, can only reveal its profound anchorage in arbitrariness. For instance, that justice, detached from love and friendship, is but a blind catechism of social peace and order, teaching by rote and by decree the articles of community faith and the artificial regulations establishing the self-sufficing and self-correcting borderlines between the pure and the impure, the permitted and the forbidden -- the legal and the illegal.

And when justice is "straight-jacketed" in the legal, it more often that not appears stale and diminished. In international law more than in most areas it is clear that justice needs to be nourished by friendship. For, "when human beings are friends they have no need of justice, whereas when they are just they still need friendship" (Aristotle, Nicomachean Ethics, VIII, 1).

A suggested Resolution to amend the Rules is appended.

APPENDIX

SUGGESTED RESOLUTION TO AMEND THE STANDARD MINIMUM
RULES FOR THE TREATMENT OF PRISONERS

The Eighth United Nations Congress on the Prevention of
Crime and the Treatment of Offenders,

Bearing in mind the long-standing concern of the
United Nations for the humanization of criminal justice
and the protection of human rights,

Bearing in mind also that sound policies of crime
prevention and control are essential to planning for
economic and social development,

Recalling that over thirty years have passed since
the First United Nations Congress on the Prevention of
Crime and the Treatment of Offenders adopted the
Standard Minimum Rules for the Treatment of Prisoners,

Recalling also that the Standard Minimum Rules
sought, on the basis of a general consensus, to set out
what was generally accepted at the time as being good
principle and practice in the treatment of prisoners and
the management of penal institutions,

Acknowledging that the Standard Minimum Rules
tended to be, as their name suggests, minimum rules,

Recognizing that the Rules were not intended to be
immutable and that the First United Nations Congress on
the Prevention of Crime and the Treatment of Offenders
and subsequent congresses recognized that the Rules
cover a field in which thought is constantly developing,

Considering also the concerns of the Fifth and
Sixth Congresses pertaining to the implementation of the
Rules, and the concern of the Economic and Social
Council that there exist obstacles of various kinds to
the full implementation of the Rules,

Believing that full implementation of the Rules is
being impeded by a lack of expression of certain basic

principles, the absence of which gives rise to divergence in interpretation,

Noting that, since the Standard Minimum Rules were adopted in 1955, other United Nations instruments for the protection of human rights have given expression to concepts not fully reflected in the Rules,

Noting also that the Fifth United Nations Congress was asked to consider "the possible need for recasting the Rules so as to correspond with the two distinct subject areas they covered: human rights aspects and sound correctional practices ...,"

Noting further that Resolution No. 14 of the Sixth Congress requested the General Assembly to include a specific item concerning the implementation of human rights for prisoners in the agenda of the Seventh Congress,

Desiring to express the basic principles underlying the Rules and to include them in the Rules,

Desiring also to reflect a principle that was noted by the Seventh Congress, namely, that the function of the criminal justice system is to contribute to the basic values and norms of society,

1. Adopts the annexed Amendment to Part I of the Standard Minimum Rules for the Treatment of Prisoners;
2. Recommends that the Economic and Social Council approve it;
3. Invites the General Assembly to endorse it and to urge Member States to implement it in national legislation and policy;
4. Requests the Secretary-General to ensure its wide dissemination.

ANNEX

AMENDMENT TO PART I OF THE STANDARD
MINIMUM RULES FOR THE TREATMENT OF PRISONERS

RULES OF GENERAL APPLICATION

Basic Principle

Amended to read as follows:

Basic Principles

6. (1) All prisoners shall be treated with the respect due to their inherent dignity as human beings.
- (2) The responsibility of prisons for the custody of prisoners and for protecting society against crime shall be carried out in keeping with the state's other social objectives and its fundamental responsibilities for promoting the well-being and development of all members of society.
- (3) There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- (4) Except for the necessary limitation of the freedom of movement, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and its Optional Protocol, and such other rights as are set out in other covenants of the United Nations.
- (5) All prisoners shall have the right to take part in cultural life and to education directed to the full development of the human personality.